

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

**LORETTA MONK-WHITE and TIMOTHY
MONK, each individually and on behalf of
the Estate of their father, JESSIE MONK,
deceased**

CIVIL ACTION NO.

VERSUS

JUDGE

**ARCADIA NURSING AND
REHABILITATION CENTER, L.L.C.,
db/a WILLOW RIDGE NURSING
AND REHABILITATION CENTER, L.L.C.,
DTD HC, L.L.C., AND D&N, L.L.C.**

MAGISTRATE JUDGE

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1332 and 1441, and further based upon the grounds set forth in this Notice of Removal, Defendants, ARCADIA NURSING AND REHABILITATION CENTER, L.L.C., db/a WILLOW RIDGE NURSING AND REHABILITATION CENTER, DTD HC, L.L.C., AND D&N, L.L.C. (referred to as "Defendants"), with full reservation of all rights and defenses, hereby remove this action from the Second Judicial District Court for the Parish of Bienville, State of Louisiana, to the United States District Court, for the Western District of Louisiana, Shreveport Division. In support of this Notice of Removal, Defendants state as follows:

1.

On November 17, 2017, Plaintiffs, Loretta Monk-White and Timothy Monk, individually and on behalf of the Estate of their father, Jessie Monk, deceased, filed their Petition for Breach of Contract, Wrongful Death and Survival Damages, alleging that Defendants failed to provide reasonable care in accordance with the standards of care required which resulted in the death of Mr. Jessie Monk on September 15, 2017. A copy of plaintiff's Petition for Breach of Contract, Wrongful Death and Survival Damages, along with all other papers received by Defendants or otherwise filed in state court are attached hereto as Exhibit 1 in compliance with 28 U.S.C. § 1446(a).

2.

Defendants file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441(a), and 1446(a) and without prejudice to any defense Defendants may have to Plaintiff's action, jurisdictional or otherwise.

3.

The citizenship of a limited liability company is determined by the citizenship of all of its members. *Harvey vs. Grey Wolf Drilling Co.*, 542 F.3d 1077 (5th Cir. 2008). Arcadia Nursing and Rehabilitation Center, L.L.C., d/b/a Willow Ridge Nursing and Rehabilitation Center, is a Louisiana limited liability company. Willow Ridge Nursing and Rehabilitation Center is a registered trade name of Arcadia Nursing and Rehabilitation Center, LLC.

4.

The sole members of **Arcadia Nursing and Rehabilitation Center, LLC** are **D&N, L.L.C.** (50%) and **DTD HC, L.L.C.** (50%).

5.

D&N, L.L.C. is a New York limited liability company with its principal place of business in Orchard Park, New York. Its members are **Norbert A. Bennett, The Norbert A. Bennett Children's Trust,** and **The Norbert A. Bennett Grandchildren's Trust.** **Norbert A. Bennett** is an adult resident citizen and domiciliary of Erie County, New York. **Ronald Bennett**, a citizen and domiciliary of New York, is the Trustee of **The Norbert A. Bennett Children's Trust** and **The Norbert A. Bennett Grandchildren's Trust.** (See Exhibit 2.)

6.

DTD HC, L.L.C. is a New York limited liability company, whose members are **Donald T. Denz** and **The Donald T. Denz Irrevocable Trust.** **Donald T. Denz** is an adult resident citizen and domiciliary of Erie County, New York. **Martin J. Clifford**, a citizen and domiciliary of New York, is the Trustee of **The Donald T. Denz Irrevocable Trust.** (See Exhibit 3.)

7.

Defendants know of no limited liability company by the name of Willow Ridge Nursing and Rehabilitation Center, L.L.C., and believes this to be a mistaken misnomer by the state court Plaintiff.

8.

The Petition for Damages of Breach of Contract, Wrongful Death and Survival Damages provides that at the time of filing, Plaintiffs Loetta Monk-White and Jessie Monk were citizens and domiciliaries of Louisiana. Decedent, Jessie Monk, was a resident of Willow Ridge Nursing Home from May 2017 to August 2017. Willow Ridge Nursing Home is located in Arcadia, Louisiana.

Accordingly, the Plaintiffs are domiciled in the State of Louisiana and are citizens of the State of Louisiana, pursuant to 28 U.S.C. §1332.

9.

As the law of this Court is that diversity of a limited liability company is determined by the citizenship of its members, diversity jurisdiction is proper in this Court as all of the Defendants have citizenship in New York, pursuant to applicable law, as set forth above. Accordingly, complete diversity of citizenship exists between Plaintiffs and Defendants.

10.

Although the Defendants expressly deny any liability, the amount in controversy, as to Plaintiffs, considering the claimed damages, and the specific allegations of damages of the Complaint, fairly exceeds \$75,000.00, excluding interest and costs, due to the fact, among others, that plaintiffs have alleged the wrongful death of Jessie Monk.

11.

Pursuant to 28 U.S.C. § 1446(a), the Complaint, which is the only pleading received by Defendants, in the state court action, is being filed along with this Notice of Removal (attached as Exhibit 1 hereto).

12.

This Notice of Removal is timely filed under the provisions of 28 U.S.C. § 1446 because it is filed within thirty (30) days of receipt of the Petition by Defendants.

13.

All Defendants are hereby joined in the Petition of Removal in a timely fashion subsequent to service.

14.

Pursuant to 28 U.S.C. § 1446(d), promptly after the filing of this Notice of Removal with this Court, copies of this Notice of Removal will be filed with the Clerk of Court for the Second Judicial District Court for the Parish of Bienville and will be served on the Plaintiffs, through their counsel of record, in the removed action.

15.

Pursuant to 28 U.S.C. § 1446(d), the filing of this Notice of Removal in this Court and the filing of same with the state court, serves immediately to confer upon this Court exclusive jurisdiction over this action and simultaneously to divest the state court of jurisdiction with respect to this action.

WHEREFORE, Defendants, ARCADIA NURSING AND REHABILITATION CENTER, L.L.C., db/a WILLOW RIDGE NURSING AND REHABILITATION CENTER, DTD HC, L.L.C., AND D&N, L.L.C., pray that this action be removed to this Court.

(Signature on Next Page)

Respectfully submitted,

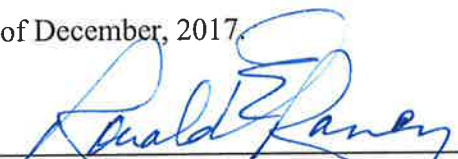
LUNN, IRION, SALLEY, CARLISLE & GARDNER

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE

I hereby certify that a copy of the above and foregoing Notice of Removal has been electronically forwarded to Gia Kosmitis, via facsimile, 865-0809.

Shreveport, Louisiana, this 28 day of December, 2017.


RONALD E. RANEY/RYAN O. GOODWIN